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REMARKS

Reconsideration of this application is respectfully requested.

Claims 1-8 are in the application. Through this amendment, claim 1 has been amended.

In the Official Action, the Examiner rejected claims 1-8 on the grounds of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-13 of U.S. Patent No. 7,247,471 in view of Gilbert '770 and Norwood. The Examiner specifically stated that, "Claims 1-13 meets all claimed limitations except for the apex being equal from the outer apex and the bottom wall and the top wall terminate at a diameter equal to the diameter defined by the outer apex." Applicant does not believe that claims 1-8 of the present application provide obvious variants of the noted claims of U.S. Patent No. 7,247,471. In addition, a further amendment has been presented herein. In view of the continued prosecution of the subject application, Applicant requests reconsideration of this rejection. If the application is in order for allowance, except for a rejection under this basis, Applicant respectfully requests that an *Ex parte Quayle* action be issued to resolve this point.

The Examiner rejected claims 1-4 and 6-8 under 35 U.S.C. §102(a) as being allegedly unpatentable over Parker (U.S. Patent No. 3,946,903) in view of Norwood (U.S. Patent No.

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5,209,372), or in the alternative, under 35 U.S.C. §103(a) as being allegedly unpatentable over Norwood in view of Parker.

Parker is directed to a collapsible, spirally fluted container. As clearly shown in Figs. 2 and 3, the top and base of the container are formed with smaller diameters than the side wall of the container. The Parker container is intended for dispensing food and other flowable materials. (See, col. 1, ll. 25-28; col. 4, ll. 32-37). In particular, the Parker container is partially collapsed over time to dispense product as needed. As set forth at col. 4, ll. 17-25,

The described container is particularly well suited to the dispensing of viscous materials such as cold cream, toothpaste, peanut butter, processed cheese or the like. When used with such contents the resilience of the container is such that after partial collapse to dispense some of the contents, the container does not return to its original shape. The material climbs the spiral flutes and is retained at any particular elevation by the apices of the flutes.

To provide maximum efficiency in dispensing products, smaller diameter flutes are provided at the top and bottom of the side wall, as shown in Fig. 7. In addition, an expeller 35 is provided in the bottom of the container which acts to force out any material located in between the flutes. (See, col. 3, ll. 14-16, ("Thus, the expeller 35 in combination with the collapsible flutes acts to dispense substantially all of the container contents.")).

Norwood is directed to a collapsible spiral container which includes a side wall 24. The spiral of the side wall is defined by upper sides 38 and bottom sides 40. As stated at col. 2, ll.

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55-63, the upper sides 38 have longer length than the bottom sides 40. With this arrangement, as indicated at col. 2, ll. 64-67, the bottom sides 40 buckle and fold when the bottle is compressed. As shown in Fig. 4, the upper sides 38 maintain their shape in a compressed state.

With respect to a proposed hypothetical combination of Parker and Norwood, it appears that it is the Examiner's position that it would have been obvious to modify Parker to have the top and bottom wall each terminate at a diameter generally equal to a diameter defined by the outer apex of the spiral flute. However, as indicated above, Parker desires reduced diameter pleats at the ends to maximize the amount of material to be dispensed. In view of this desired objective, there is no basis to modify Parker as asserted by the Examiner. (See, MPEP §2143.01(V)).

In addition, claim 1 has been amended to indicate that the pleat extends "along a right cylindrical section of said side wall" with "said helical pleat terminating along straight end portions of said right cylindrical section of said side wall, said straight end portions being disposed generally perpendicularly to a longitudinal axis of the roller bottle". Parker does not provide such an arrangement. Rather, the spiral flutes extend upwardly to define channels for urging material during dispensing. As indicated above, the dispensed material is urged along the flutes during dispensing. (See, e.g., col. 4, ll. 23-25). Parker specifies that the flutes be "directed

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upwardly and inwardly toward the central conduits.” (Col. 2, l. 63 - col. 3, l. 6). Parker can not be modified to avoid this desired objective. (See, MPEP §2143.01(V)).

With respect to the hypothetical combination of Norwood and Parker, it is respectfully submitted that this is an improper combination. It appears to be the Examiner’s position that the pleats of Norwood can be modified to have even length sides. However, as discussed above, the length of the sides of the pleats in Norwood are critical to the design. As such, Norwood and Parker can not be combined as suggested by the Examiner. (See, MPEP §2143.01(V) (“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, than there is no suggestion or motivation to make the proposed modification.”)) It is respectfully submitted that claim 1, along with dependent claims 2-4 and 6-8, are patentable over Parker and Norwood, each taken alone or in combination.

The Examiner rejected claims 1-8 under 35 U.S.C. §103(a) as being allegedly unpatentable over JP 2001-335036 (“JP ‘036”) in view of Norwood or in the alternative, under 35 U.S.C. §103(a) as being allegedly unpatentable over Norwood in view of JP ‘036.

JP ‘036 discloses a bottle which includes a top wall and a pleated section which extends to the base of the bottle.

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With respect to the hypothetical combination of JP '036 and Norwood, claim 1 has been amended to indicate that the helical pleat extends "along a right cylindrical section of said side wall" with "said helical pleat terminating along straight end portions of said right cylindrical section of said side wall, said straight end portions being disposed generally perpendicularly to a longitudinal axis of the roller bottle". In addition, claim 1 recites a bottom wall, "wherein said bottom wall and said top wall each terminate at a diameter generally equal to a diameter defined by said outer apex" of the helical pleat. JP '036 does not provide such an arrangement. Rather, the bottle of JP '036 is completely pleated to the bottom of the bottle. As shown in Figs. 7 and 10, it is desired in JP '036 to have the bottle be collapsed in a most maximum fashion. There is no bottom wall in addition to a helical pleat which has generally the same outer diameter. With the arrangement of the subject invention as set forth in claim 1, a roller bottle is provided which includes a stable base that also provides a portion of the side resting surface, along with the top, for the roller bottle for rolling action during cell growth culturing. This stable base is not provided in JP '036. Moreover, in view of the desired full collapse of the JP '036 bottle, there is no basis to modify JP '036 to have such.

With respect to the hypothetical combination of Norwood and JP '036, for the same reasons set forth above, Norwood can not be modified to avoid the different length sides for the flutes. It is respectfully submitted that claims 1-8 are patentable over JP '036 and Norwood, each taken alone or in combination.

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The Examiner rejected claims 1, 2, 3 and 7 under 35 U.S.C. §102(b) as being allegedly anticipated by Gilbert (U.S. Patent No. RE 38,770).

Gilbert is directed to a collapsible container which has a helical groove 80 formed to cooperate with helical cup threads 46 of cup 40. (Col. 7, ll. 12-14). As shown in Fig. 3, the bottle is placed into the cup 40 and caused to rotate, resulting in collapsing of the bottle. (Col. 7, ll. 20-30).

As discussed above, claim 1 has been amended to indicate that the helical pleat extends "along the right cylindrical section of said side wall". The helical groove 80 of Gilbert does not extend along a right cylindrical section, but is provided to continue in a helix along the length of the bottle. In this manner, a maximum amount of the helical groove 80 can be run through the threads of the cup 40 in causing collapse of the bottle. Moreover, there is no suggestion to modify Gilbert, since such modification would require the helical groove to be interrupted, thus interfering with the ability to thread the helical groove 80 through the threads of the cup 40. It is respectfully submitted that claim 1, along with dependent claims 2, 3 and 7, are patentable over Gilbert.

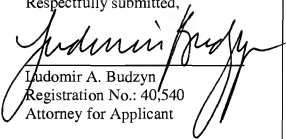
The Examiner rejected claims 4, 6 and 8 under 35 U.S.C. §103(a) as being allegedly unpatentable over Gilbert. The Examiner asserted that these claims are obvious over Gilbert.

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Claims 4, 6 and 8 all depend from claim 1. For the reasons set forth above, it is respectfully submitted that claims 4, 6 and 8 are also patentable over Gilbert.

Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact Applicant's attorney at the number listed below.

Respectfully submitted,



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